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January 12, 2007

BY FACSIMILE AND ECF

Honorable Jack B. Weinstein  
Senior Judge  
United States Courthouse  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: In re: Zyprexa Products Liability Litig., MDL No.1596  
This document relates to:  
Perry, et al. v. Eli Lilly and Company 06 CV 1729 (JBW)

Dear Judge Weinstein:

Having failed to adduce any evidence to oppose the motion for summary judgment, plaintiff has, for no legitimate reason, noticed the deposition of opposing counsel, Nina M. Gussack, Esquire, solely because she signed an attorney's affidavit. As plaintiff's counsel must recognize, Ms. Gussack's knowledge of the facts of this case derives only from information that is either (a) available to plaintiff's counsel through the voluminous discovery already provided or (b) privileged or attorney work-product. That is why attorneys' depositions are disfavored. Accordingly, Eli Lilly and Company ("Lilly") requests that this Court quash the Notice of Deposition and impose sanctions on counsel for plaintiff for this unprofessional act of desperation.

I. Background

On December 28, 2006, counsel for plaintiff told this Court that he needed to re-depose certain doctors who, for "strategic reasons," had not been asked the only questions that – if answered as he fantasized – could salvage his case from summary judgment. *Exhibit A* at 9:20-24, 11:11-17. This Court granted counsel's request. *Exhibit B*. Now, having taken those depositions but having failed to elicit the testimony he had hoped for, plaintiff's counsel has demanded the deposition of Lilly's lead counsel because "you have interjected yourself as a fact witness in this case by filing your statement of undisputed facts" as required by the Local Rules of the Eastern District of New York ("Statement"). Local Civ. R. 56.1; *Exhibit C*. That Statement merely identified for the Court and provided (as exhibits) the various documents and

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deposition transcripts upon which Lilly based its motions. Indeed, Ms. Gussack declares that her “personal knowledge of the facts and circumstances set forth [in the Statement] are based on published literature and/or the documents of Eli Lilly and Company.” Statement at ¶ 1.

There is nothing to distinguish Ms. Gussack’s declaration from that of any other counsel whose client moves for summary judgment and complies with the local rules. Ms. Gussack does not have discoverable personal knowledge of plaintiff, plaintiff’s physicians or other relevant matters. Plaintiff fails to conjure up a legitimate reason to take opposing counsel’s deposition. This desperate and offensive tactic should be rejected by this Court.

## II. Argument

Depositions of opposing counsel are disfavored. *United States v. Yonkers Bd. of Educ.*, 946 F.2d 180, 1856 (2d Cir. 1991). As the Court recognized in *Roznitsky v. Schwartz Cobb & Scheinert*, No. 98 Civ. 6643, 1999 WL 187074, at \*2 (S.D.N.Y. Apr. 6, 1999), even a deposition of counsel limited to relevant and non-privileged information risks disrupting the attorney-client relationship and impeding the litigation. In determining whether a deposition of opposing counsel is appropriate, the Second Circuit, in *In re Subpoena Issued to Dennis Friedman*, 350 F.3d 65 (2d Cir. 2003), directs a:

flexible approach to lawyer depositions whereby the judicial officer supervising discovery takes into consideration all of the relevant facts and circumstances to determine whether the proposed deposition would entail an inappropriate burden or hardship. Such considerations may include the need to depose the lawyer, the lawyer’s role in connection with the matter on which discovery is sought and in relation to the pending litigation, the risk of encountering privilege and work-product issues, and the extent of discovery already conducted.

*Id.* at 72. Applying the *Friedman* factors to this case requires that the Notice of Deposition be quashed.

Plaintiff has identified no need for Ms. Gussack’s deposition. Ms. Gussack’s personal knowledge of the facts set forth in the Statement consists of certain published literature and/or the documents of Lilly, all of which were attached to her declaration. Any relevant and non-privileged information is in plaintiff’s possession.

Ms. Gussack’s role in this litigation as Lilly’s lead litigation counsel also requires that the notice be quashed. Permitting her deposition would serve only to impede the litigation and risk disrupting the attorney-client relationship. Indeed, as lead counsel for Lilly since the inception of this litigation, she could provide no discoverable facts, and any “relevant” testimony would be

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barred as privileged or attorney work product. Any line of questions would intrude upon the attorney-client privilege and the attorney work-product doctrine.

Moreover, the fact that virtually all of the discovery in this case has been completed shows that there is no legitimate need for the deposition. The Notice of Deposition was served after Lilly filed a motion for summary judgment and after the Court permitted plaintiff's counsel to re-depose certain doctors.

### III. Conclusion

For the foregoing reasons, this Court should quash the Notice of Deposition issued to Nina M. Gussack, and award Lilly the fees and costs incurred in making this motion.

Respectfully,

A handwritten signature in cursive script, appearing to read 'Samuel J. Abate, Jr.'.

Samuel J. Abate, Jr.  
(SA 0915)

Copy to: Michael J. Miller, Esq. (by facsimile)  
William Audet, Esq. (by e-mail)  
James Shaughnessy, Esq. (by e-mail)  
Special Master Peter Woodin (by e-mail)

## **EXHIBIT A**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X

PERRY

Plaintiff :

-against- 06-CV-1729  
ELI LILLY AND COMPANY : U.S. Courthouse  
Brooklyn, N.Y.

December 28, 2006

- - - - - X 11:30 a.m.

BEFORE:

HONORABLE JACK B. WEINSTEIN  
United States District Judge

APPEARANCES:

For Eli Lilly: PEPPER HAMILTON, LLP  
3000 Two Logan Square  
Eighteenth and Arch Streets  
Philadelphia, PA 19103-2799  
BY: NINA M. GUSSACK  
ANDREW E. KANTRA  
CHRISTOPHER W. WASSON

For Eli Lilly: McCARTER & ENGLISH, LLP  
245 Park Avenue  
New York, New York 10167  
BY: SAMUEL J. ABATE, JR.

1 For David Egilman: EDWARD W. HAYES  
515 Madison Avenue, 30th Floor  
2 New York, New York  
and  
3 KOOB & MAGOOLAGHAN  
19 Fulton Street, Suite 408  
4 New York, New York 10038  
BY: ALEXANDER A. REINERT

5  
6 For the Plaintiff: MILLER & ASSOCIATES  
7 Perry 105 North Alfred Street  
Alexandria, Virginia 22314  
8 BY: MICHAEL J. MILLER  
9 For PSC: FIBICH, HAMPTON & LEEBRON, LLP  
1401 McKinney, Suite 1800  
10 Five Houston Center  
Houston, Texas 77010  
11 BY: TOMMY FIBICH  
12

Appearances Via Telephone:

13 WILLIAM M. AUDET

14 EVAN JANUSH

15 RICHARD MEADOW

16  
17 Court Reporter: RONALD E. TOLKIN, RPR & RMR  
225 Cadman Plaza East  
18 Brooklyn, New York 11201  
19 (718) 613-2647

20  
21 Proceedings recorded by mechanical stenography, transcript  
produced by Computer-Assisted Transcript.  
22  
23  
24  
25

1 THE CLERK: Civil cause for motion, Perry, et al.,  
2 versus Eli Lilly and Company.

3 THE COURT: Was there one case or two cases?

4 MS. GUSSACK: There are two cases, Your Honor. The  
5 two cases that -- in which we filed motions for summary  
6 judgment, November 28th, Cusella and Salva, which I think are  
7 captioned in the Perry case.

8 THE COURT: So it is Perry and Niely --

9 MS. GUSSACK: Those are real recent --

10 THE COURT: Perry and Salva are the two cases.

11 MS. GUSSACK: Yes. Yes.

12 THE COURT: Just Niely, N-i-e-l-y P-e-r-r-y; Monty,  
13 M-o-n-t-y S-o-u-t-h-e-r; and Robert Cusella, C-u-s-e-l-l-a.  
14 06 Civ. 1729.

15 MS. GUSSACK: Judge, they are all plaintiffs in a  
16 case captioned under the Niely Perry name. The two motions  
17 that have been pending since November 28 relate to the Cusella  
18 plaintiff and Souther plaintiff.

19 THE COURT: Yes.

20 MS. GUSSACK: We filed two other motions more  
21 recently, but they are not yet ripe.

22 THE COURT: Okay.

23 MS. GUSSACK: And actually, to be accurate, we have  
24 not yet received a response from plaintiffs' counsel on our  
25 motion for summary judgment that are the subject of the

1 conference.

2 THE COURT: But this is an 06 CV 1729.

3 MS. GUSSACK: Yes, Your Honor.

4 THE COURT: And it's part of the M.D. 1596 matter?

5 MS. GUSSACK: Yes, Your Honor.

6 THE COURT: Although I don't have all of the papers  
7 here, I thought it advisable to meet because in going through  
8 the defendants' papers, I concluded preliminarily that there  
9 was no need for experts. But I would like to see the -- or  
10 hear the views of the parties. It seemed to me in going over  
11 these papers that there is not expert issue which it is an  
12 issue of law with respect to state grounds.

13 MR. MILLER: Your Honor, I am counsel for the two  
14 parties. I am here today really pursuant to the Court's order  
15 not to talk of the substance of this.

16 THE COURT: My order --

17 MR. MILLER: The order was to talk scheduling. We  
18 have experts, and we are prepared.

19 THE COURT: You have experts on these issues. As I  
20 understand it, the position, based on my reading of the  
21 papers, is that the plaintiffs were prescribed the drug after  
22 the insert appeal and was approved by the FDA.

23 MR. MILLER: Your Honor, I don't believe that to be  
24 wholly accurate, and I think there is lots of substantive  
25 arguments we could make and will make to the Court when the



1 Court tells us to file responsive papers that will suggest  
2 that many of the facts laid out by Lilly are wrong.

3 THE COURT: Well, so --

4 MR. MILLER: I don't know how much the Court wants  
5 me to substantively argue it.

6 THE COURT: Well, what I want to know is what kind  
7 of experts, if any, do we need. If my understanding of the  
8 defendants' papers is accurate, I don't see the need for an  
9 expert.

10 MR. MILLER: We respectfully disagree, Your Honor.

11 THE COURT: What experts and why?

12 MR. MILLER: Well, we will have expert to suggest  
13 that the warning that finally was -- that -- provided to the  
14 medical community in March of 2004 and not September of 2003,  
15 as suggested, was still inaccurate -- was false, knowingly  
16 false; that that is inadequate warning, in and of itself, and  
17 that we have experts to prove that, in fact, ironically  
18 experts that used to work for Lilly. So we believe those  
19 experts are highly relevance to show that their assertion that  
20 Zyprexa doesn't cause diabetes any more than the class of  
21 drugs, the typical drugs, is knowingly false. Their assertion  
22 that they had promptly warned the medical community in  
23 September of '03 is knowingly false.

24 THE COURT: Well, you want -- you do want to put  
25 experts in?

1 MR. MILLER: Yes, Your Honor.

2 THE COURT: How many experts and what are their  
3 names?

4 MR. MILLER: We have until January 5th to name them,  
5 but if the Court asks me now, we have experts. We have --  
6 have generic experts and we have case specific experts.

7 THE COURT: How many experts?

8 MR. MILLER: We're going to have about six generic  
9 experts.

10 THE COURT: Well, we're -- if you are going to have  
11 experts, are you going to file Rule 26 specifications?

12 MR. MILLER: Yes, Your Honor.

13 THE COURT: When?

14 MR. MILLER: They are due January 5th, and we intend  
15 to file them timely, Your Honor.

16 THE COURT: Okay. And so what are you going to do  
17 for the -- for Lilly?

18 MS. GUSSACK: Well, Your Honor, let me address your  
19 preliminary question first, if I might.

20 There are -- there is no need for experts on the  
21 motions that were filed. The motion raise a simple legal  
22 issue. The gravamen of plaintiffs' complaint is whether Lilly  
23 adequately warned the prescribing physician and would the  
24 physician have prescribed the medicine for the patient at  
25 issue given the information. In both cases, in undisputed

1 factual records, both prescribing physicians have said they  
2 were aware of the alleged risk that Zyprexa causes weight  
3 gain, and they were aware of the alleged risk or allegation  
4 made by plaintiffs that it increased the risk of diabetes.

5 And in both cases they have testified that with that  
6 knowledge, that is, the very specific risk that the  
7 plaintiffs' claim the warning is deficient on, the physicians  
8 said they knew and they prescribed it anyway. And in both  
9 cases they said it was the best medicine for the patient,  
10 weighing the benefits and risks specific to each of those  
11 patients.

12 As a legal matter, that is a learned intermediary  
13 defense that doesn't call for expert opinion on any issue.  
14 The law of the state is clear, and the cases are ripe for  
15 dispositions.

16 We are happy to discuss experts because we, too,  
17 will be filing our expert reports as required by the Court's  
18 scheduling order, but there is no basis on which any expert  
19 opinion can contravene the testimony of the prescribing  
20 physician in these cases.

21 THE COURT: So you would go forward, as I understand  
22 your position, with your motion without the use of any  
23 experts?

24 MS. GUSSACK: Yes, Your Honor.

25 THE COURT: Okay.

1 MS. GUSSACK: Our experts are designed to counter  
2 what I presume when we see them -- may raise Daubert issues  
3 for us on causation generally, but these are legal issues that  
4 are posed by the undisputed factual records. This has nothing  
5 to do with what Lilly suggests or believes. This has to do  
6 with the testimony of witnesses whose testimony is recorded in  
7 these motions.

8 THE COURT: So your motion then assumes you will not  
9 be using any experts?

10 MS. GUSSACK: For these motions that is correct,  
11 Your Honor.

12 THE COURT: Okay. But do you want to use experts  
13 anyway?

14 MR. MILLER: Absolutely, Your Honor.

15 The point made by Counsel opposite is not the point  
16 at issue. The issue is not whether or not these treating  
17 physicians knew that Zyprexa causes diabetes. The issue is  
18 whether these treating physicians and the medical community  
19 generally were adequately warned not only that, A, Zyprexa  
20 causes diabetes, but Zyprexa causes at four times the rate of  
21 other drugs of equal effectiveness for the same condition, and  
22 that is the point that --

23 THE COURT: Have you deposed the doctors that they  
24 are relying on?

25 MR. MILLER: We have attended some of -- we have

1 attended all of the depositions, but we -- we -- we will  
2 submit the necessary affidavits to support our motion that if  
3 properly warned, they would not have prescribed the drug, and  
4 if properly warned, the medical community --

5 THE COURT: Well, have you asked them that?

6 MR. MILLER: Have I asked them that?

7 THE COURT: Uh-huh.

8 MR. MILLER: Not at the deposition for -- for  
9 strategic reasons. I intend to call the treaters in my  
10 case-in-chief, Your Honor. I have not asked them at discovery  
11 depositions, no, Your Honor.

12 THE COURT: Okay. Well, do you want time to ask  
13 them? Because I believe if they are asked and they answered,  
14 as the defendants indicate, there is no need for any experts.

15 MR. MILLER: Well, there are two different  
16 questions. If asked a question that the defendants' attorney  
17 would like to ask them, they may say, "Yes. I was aware that  
18 all atypicals caused diabetes." But when asked the proper  
19 question, "Sir, if you were aware, Doctor, that Zyprexa  
20 causes --"

21 THE COURT: Well, why didn't you ask that on the  
22 deposition?

23 MR. MILLER: Strategic reasons, Your Honor. I don't  
24 want to ask it in discovery.

25 THE COURT: Well, you'd better ask it.

1 MR. MILLER: Yes, sir.

2 THE COURT: Because if they are prepared to go  
3 without an expert, I will hear the motion without any experts.  
4 Take their deposition because they are basing their motion, as  
5 I understand it, essentially on a learned intermediary theory  
6 and not on the theory that their drug did not cause diabetes  
7 or even that it did not cause diabetes to greater degree than  
8 other drugs.

9 MR. MILLER: But that is what basing our case on,  
10 the failure to warn of that specific --

11 THE COURT: I understand.

12 But that -- that is not the issue on the motion, as  
13 I will understand their position. They are not contesting,  
14 for purposes of the motion, that Zyprexa causes the diseases  
15 or facilitates the disease, however you want to put it, and  
16 that it does so to a greater degree than other available  
17 drugs. They are not contesting that.

18 That being the case, it seems to me I don't need  
19 any experts, and I don't want to go into a long Daubert  
20 proceedings -- series of proceedings with six of your  
21 witnesses and six of theirs or how many they want to propose.

22 MR. MILLER: If -- if I may, Your Honor?

23 I don't -- I didn't make myself clear enough. We  
24 don't have six experts on this particular issue. We will have  
25 one generic expert on this issue, and the case specific

1 triggers, and they will -- they will, in sum and substance,  
2 say, "Because this drug was worse than the rest of the class  
3 with no more greater efficacy than the class, on that set of  
4 facts, of course I would not have used this drug if I had been  
5 adequately warned."

6 And that is a failure to warn case, with a learned  
7 intermediary doctrine under state law will not --

8 THE COURT: You will do it with your experts, but  
9 not with the treating physicians.

10 MR. MILLER: With both.

11 THE COURT: You have not asked the treating  
12 physicians --

13 MR. MILLER: Well, I had --

14 THE COURT: -- because you don't know.

15 MR. MILLER: Well, I -- that's -- I haven't asked  
16 them during the discovery deposition, Your Honor, because I do  
17 not believe it was strategically warranted.

18 THE COURT: So you don't know?

19 MR. MILLER: We do de bene esses.

20 MR. WASSON: Actually, Your Honor, I attended the  
21 depositions that were held, Your Honor. And -- and the  
22 questions were asked in some form by counsel for Mr. Miller  
23 who attended the depositions in cross-examination, and the  
24 simple fact of the matter is these doctors said, "I was aware  
25 of those specific risks that are the gravamen of the

1 complaints.

2 THE COURT: All right.

3 MR. WASSON: Failure to warn --

4 THE COURT: You can submit the affidavits of the  
5 doctors, but I am not going to hold any Daubert hearing  
6 separately. We will proceed by affidavit and deposition.

7 Do you want time to take supplementary depositions  
8 of the -- of those doctors they are relying on?

9 MR. MILLER: Yes, Your Honor.

10 THE COURT: All right. You can take them within ten  
11 days. When are you going to provide your motion response?

12 MR. MILLER: Your Honor had ruled on the six that we  
13 had to do them right after Daubert, but I'm -- does the Court  
14 want it sooner? It's up to the Court.

15 THE COURT: There is not going to be any Daubert.  
16 You are going to take a supplementary deposition if you want  
17 one, now that you know where we are.

18 MR. MILLER: May I --

19 THE COURT: And --

20 MR. MILLER: I am sorry, Your Honor.

21 THE COURT: And that being so, when are you going to  
22 have your papers --

23 MR. MILLER: May we --

24 THE COURT: -- so we can schedule an argument?

25 MR. MILLER: Fourteen days after the ten-day period.



1 THE COURT: Okay. What does that lead to? Does  
2 somebody have a calendar?

3 MR. MILLER: Yes, Your Honor.

4 THE COURT: You want time to respond for Lilly?

5 MS. GUSSACK: I am sorry, Your Honor.

6 THE COURT: Do you want time to respond?

7 MS. GUSSACK: Yes, Your Honor.

8 THE COURT: One week.

9 MS. GUSSACK: Briefly, one week.

10 THE COURT: Seven days.

11 MS. GUSSACK: Yes.

12 MR. MILLER: The 23rd probably is the right day. I  
13 didn't count them out.

14 THE COURT: The 23rd for you.

15 MR. MILLER: Yes, Your Honor.

16 THE COURT: The 23rd for the plaintiffs' --

17 MR. MILLER: Yes, Your Honor.

18 THE COURT: -- papers.

19 The 30th -- what day of the week is that?

20 LAW CLERK: A Tuesday.

21 THE COURT: The 30th for Lilly's response.

22 A week from that for the argument. What is that  
23 date?

24 THE CLERK: February 6th.

25 THE COURT: February what?

1 LAW CLERK: 6th.

2 THE COURT: What day is that?

3 LAW CLERK: Tuesday.

4 THE COURT: Tuesday, February 6th, 10:00 a.m. for  
5 argument.

6 MS. GUSSACK: Yes, Your Honor.

7 THE COURT: Anything further?

8 MR. MILLER: No, Your Honor.

9 MS. GUSSACK: No sir. Thank you.

10 THE COURT: Thank you, very much.

11 Will you submit an order, please.

12 MS. GUSSACK: Yes, Your Honor. We will.

13 THE COURT: Thank you very much.

14 Have a happy holiday everybody.

15 MS. GUSSACK: Thank you, Judge. You have as well.

16 Let me raise one point.

17 THE COURT: Yes.

18 MS. GUSSACK: We do not represent the prescriber or  
19 the treating physician in either of these cases obviously.  
20 I -- I would bring to the Court's attention that these  
21 physicians have expressed great frustration about the process  
22 and their time, and I expect that they may well, you know, be  
23 quite concerned that they gave I don't know how many hours to  
24 the deposition initially and had opportunity by plaintiffs'  
25 counsel to question them and are being subjected a second time

1 to deposition.

2 I just raise that because I think that their --  
3 their concerns need to be expressed even in their absence.

4 THE COURT: Well, I can't do anything about it at  
5 this stage. If they want to object, I can understand why they  
6 would want to. There is nothing that I can do at their  
7 moment.

8 MR. FIBICH: Your Honor, I am Tom Fibich here on  
9 behalf of PFC, and I didn't have anything to comment on here  
10 today; so I thought I would introduce you to my son. He is in  
11 third year of law school of U of H.

12 THE COURT: U of H? What is that?

13 MR. FIBICH: University of Houston.

14 And Judge, if --

15 THE COURT: U of H is also Harvard.

16 MR. FIBICH: The difference in your answers is  
17 approximately 60 years; however --

18 THE COURT: You're how old?

19 MR. FIBICH'S SON: 25.

20 THE COURT: You have a long, long way ahead of you.

21 MR. FIBICH: He has read many of your opinions and  
22 wanted to come up today since he was on break, and I thought I  
23 would introduce him to you.

24 THE COURT: Well, I am very honored to have a U of H  
25 student before me.

1 Do you have any suggestions on -- what did you see  
2 in today's proceeding. Did you see a civil rights case?

3 MR. FIBICH'S SON: I saw part of it, Your Honor.

4 THE COURT: And the other proceedings? Do you have  
5 any advise, young man? Not that you want to express in front  
6 of your father.

7 MR. FIBICH'S SON: Not at this time.

8 THE COURT: You tell your father, and he will decide  
9 if I should be told.

10 Good luck to you. Nice to meet you.

11 MR. FIBICH'S SON: Thank you, Your Honor.

12 THE COURT: Everybody have a nice holiday.

13 MS. GUSSACK: Thank you, Your Honor.

14 (The conference is concluded.)  
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## **EXHIBIT B**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In re: ZYPREXA PRODUCTS LIABILITY : MDL No. 1596  
LITIGATION :  
-----X

THIS DOCUMENT RELATES TO:

NIELY PERRY  
MONTY SOUTHER  
ROBERT CUSELLA,

Plaintiffs,

06 CV 1729 (JBW)

-against-

ELI LILLY AND COMPANY,

Defendant.

-----X  
JACK B. WEINSTEIN, SENIOR UNITED STATES DISTRICT JUDGE:

After discussion with counsel for plaintiffs and defendant concerning the Motions for Summary Judgment filed in the above referenced action, IT IS HEREBY ORDERED:

1. Plaintiffs shall conduct any additional depositions necessary for the disposition of Defendant's Motions for Summary Judgment on or before January 9, 2007; repetitive depositions of those already deposed should be avoided, if possible.
2. Plaintiffs shall file their responses to Defendant's Motions for Summary Judgment on or before January 23, 2007.
3. Defendant shall file any reply to Plaintiffs' responses on or before January 30, 2007.
4. Argument on Defendant's Motions for Summary Judgment in the above referenced action shall be held on February 6, 2007 at 10:00 a.m.

SO ORDERED.

  
Hon. Jack B. Weinstein

Dated: January 2, 2007  
Brooklyn, New York

## **EXHIBIT C**

Michael J. Miller - VA, MD, DC, PA  
J. Christopher Ide - VA, MD, DC  
Christopher A. Gomez - PA, VA  
Gary A. Godard - VA, MD, DC  
Bruce D. Burtoff, M.D., J.D. - VA, DC, FL, MS  
Peter A. Miller - VA  
Michele A. DiMartino - PA, NJ  
Danielle L. Bridgeforth - VA  
Lita Zaso-Bechara - VA  
Timothy Farrell - WA, DC and GUAM  
David Andersen - CA  
David Dickens - VA

## The Miller Firm

TRIAL LAWYERS

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Marjorie Graziano, RN, MSN, FNP-C  
Jennifer Miller, R.N.  
Nancy Leftwich, R.N.  
Website: doctoratlaw.com  
Telephone: (540) 672-4224  
(866) 529-3323  
Facsimile: (703) 519-8084

Of Counsel  
Nancy Guy Armstrong - MS

January 10, 2007

Nina Gussack  
Pepper Hamilton  
3000 Two Logan Square  
Eighteenth & Arch Street  
Philadelphia, PA 19103

Re: Zyprexa MDL 1596 Niely Perry, et al., Robert Cusella  
06CV1729

Dear Ms. Gussack:

I certainly do not take any pleasure in sending a Notice of Deposition to depose counsel in a case. However, you have interjected yourself as a fact witness in this case by filing your statement of undisputed facts. I am asking by this correspondence that you withdraw your undisputed statement of facts and withdraw as a witness in this case. Alternatively, if you decline to do so, I have attached a Notice of Deposition to take your deposition on January 17, 2007 beginning at 10:00 a.m. at our Bala Cynwyd offices. If you would like the deposition moved to your offices at Pepper Hamilton, we would be happy to discuss that.

With every best wish, I remain

Very Truly Yours,  
The Miller Firm

  
Michael J. Miller

MJM/thm

Enclosure

cc: PSC

Pennsylvania Office: 555 E. City Avenue • Suite 910 • Bala Cynwyd, Pennsylvania 19004 • Telephone: (610) 660-0622 • Facsimile: (610) 660-0628  
Alexandria Office: 105 N. Alfred Street • Alexandria, Virginia 22960 • Telephone: (703) 519-8080 • Facsimile: (703) 519-8084



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

In re: ZYPREXA  
PRODUCTS LIABILITY LITIGATION

NIELY PERRY, ET AL.

Plaintiff

v.

ELI LILLY & COMPANY,

Defendant

MDL No. 1596  
06 CV 1729 (JBW)

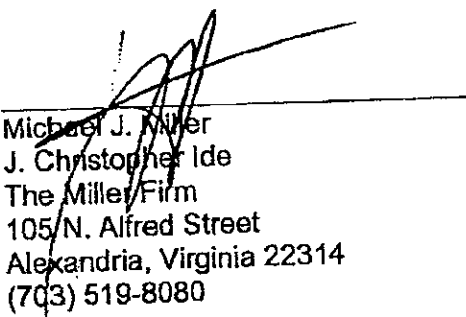
NOTICE OF VIDEOTAPED  
DEPOSITION OF  
NINA GUSSACK

TO: Nina Gussack  
PEPPER HAMILTON LLP  
3000 Two Logan Square  
Philadelphia, PA 19103

PLEASE TAKE NOTICE that pursuant to the Federal Rules of Civil Procedure, Plaintiff will examine Nina Gussack by taking her oral deposition before an officer authorized to administer oaths at 10:00 a.m. on January 17, 2007 at The Miller Firm, 555 E. City Ave., Bala Cynwyd, PA 19004. This deposition will be videotaped.

The examination will continue until completed at the time and place indicated above, or at any time and place to which it may be adjourned. You are invited to attend and participate.

DATED: January 10, 2007.



Michael J. Miller  
J. Christopher Ide  
The Miller Firm  
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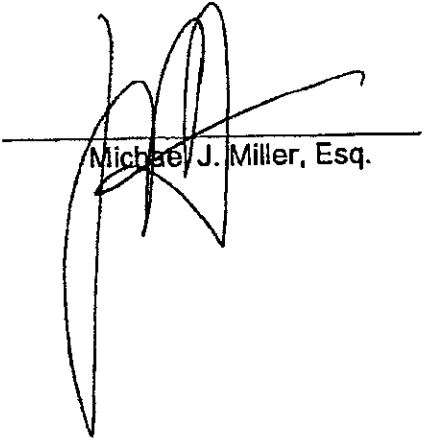
Counsel for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice of Deposition was sent  
by U.S. Mail, first-class, postage prepaid, this January 10, 2007 to:

Nina M. Gussack  
Andrew R. Rogoff  
Adam B. Michaels  
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Attorneys for Defendant  
Eli Lilly and Company



Michael J. Miller, Esq.